

For the reason stated in the preamble, 20 CFR Ch. V is amended as follows:

1. Parts 660 through 671 are added and Part 652 is amended to read as follows:

## **PART 660--INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT**

Sec. 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

Sec. 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

Sec. 660.300 What definitions apply to the regulations for workforce investment systems under title 1 of WIA?

Authority: Sec. 506(c), Pub. L. 105-220; 20 USC 9276(c).

### **Sec. 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?**

The purpose of title I of the Workforce Investment Act of 1998 (~~hereafter referred to as~~ WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

### **Sec. 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?**

The regulations found in 20 CFR parts 660-- *through* 671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively. *In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementation WIA section 188.*

### **Sec. 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?**

In addition to the definitions set forth at WIA ~~see: section~~ 101, the following definitions apply to the regulations ~~set forth~~ in 20 CFR parts 660-- *through* 671:

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker.

~~EEO~~ *EO* data means data on race and ethnicity, age, sex, and disability required by *29 CFR part 37 of the DOL*

regulations implementing ~~see: section~~ 188 of WIA, governing nondiscrimination.

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Grant means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

*Individual with a disability means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIA section 188, this term is defined at 29 CFR 37.4.*

*Labor Federation means an alliance of two or more organized labor unions for the purpose of mutual support and action.*

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local Board means a local workforce investment board established under WIA ~~see: section~~ 117, to set policy for the local workforce investment system.

*Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period. For purposes of the reallocation process described at 20 CFR 667.150, the Secretary also treats as State obligations any amounts allocated by the State under WIA sections 128(b) and 133(b) to a single area State or to a balance of State local area administered by a unit of the State government, and inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.*

Outlying area means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Participant means an individual who has registered under 20 CFR 663.105 or ~~20 CFR~~ 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

Recipient means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA ~~sees: sections~~ 127(b)(1)(C)(i)(II), 132(b)(1)(B) and 132(b)(2)(B). *The recipient is the entire legal entity that received the award and is legally responsible for carrying out the WIA program, even if only a particular component of the entity is designated in the grant award document.*

Register means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety of ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

Secretary means the Secretary of the U.S. Department of Labor.

Self certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA is true and accurate.

State Board means a State workforce investment board established under WIA ~~see: section~~ 111.

State means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term "State" does not include outlying areas.

*Subgrant means an award of financial assistance in the form of money, or property in lieu of money made under a grant by a grantee to an eligible subrecipient. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of Grant in this part.*

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. *DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 28 CFR 99-210.*

*Unobligated balance means the portion of funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.*

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. *DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210*

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 et seq.

*WIA regulations mean the regulations in 20 CFR parts 660 through 671, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA section 188 in 29 CFR part 37.*

Workforce investment activities mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

Youth activity means a workforce investment activity that is carried out for youth.

## **PART 661--STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT**

### **Subpart A--General Governance Provisions**

Sec. 661.100 What is the workforce investment system?

Sec. 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

Sec. 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

### **Subpart B--State Governance Provisions**

Sec. 661.200 What is the State Workforce Investment Board?

*Sec. 661-203 What is meant by the terms "optimum policy making authority" and "expertise relating to (a) program, service or activity?"*

Sec. 661.205 What is the role of the State Board?

*Sec. 661.207 How does the State Board meet its requirement to conduct business in an open manner under the "sunshine provision" of WIA section 111(g)?*

Sec. 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?

Sec. 661.220 What are the requirements for the submission of the State ~~w~~Workforce ~~i~~Investment ~~p~~Plan?

Sec. 661.230 What are the requirements for modification of the State ~~w~~Workforce ~~i~~Investment ~~p~~Plan?

Sec. 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

Sec. 661.250 What are the requirements for designation of local workforce investment areas?

Sec. 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?

Sec. 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?

Sec. 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?

Sec. 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

### **Subpart C--Local Governance Provisions**

Sec. 661.300 What is the Local Workforce Investment Board?

Sec. 661.305 What is the role of the Local Workforce Investment Board?

*Sec. 661.307 How does the Local Board meet its requirement to conduct business in an open manner under the*

*“sunshine provision” of WIA section 117(e)?*

Sec. 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?

Sec. 661.315 Who are the required members of the Local Workforce Investment Boards?

*Sec. 661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?*

Sec. 661.320 Who must chair a Local Board?

Sec. 661.325 What criteria will be used to establish membership of the Local Board?

Sec. 661.330 Under what circumstances may the State use an alternative entity as the local workforce investment board?

Sec. 661.335 What is a youth council, and what is its relationship to the Local Board?

Sec. 661.340 What are the responsibilities of the youth council?

Sec. 661.345 What are the requirements for the submission of the local workforce investment plan?

Sec. 661.350 What are the contents of the local workforce investment plan?

Sec. 661.355 When must a local plan be modified?

### **Subpart D--Waivers and Work-Flex**

Sec. 661.400 What is the purpose of the ~~g~~General ~~S~~tatutory and ~~r~~Regulatory ~~w~~Waiver ~~a~~Authority provided at section 189(i)(4) of the Workforce Investment Act?

Sec. 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

Sec. 661.420 Under what conditions may a Governor request and the Secretary approve a general waiver under section 189(i)(4)?

Sec. 661.430 Under what conditions may the Governor submit a ~~w~~Workforce ~~f~~Flexibility ~~p~~Plan?

Sec. 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

Authority: Sec. 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c).

### **Subpart A--General Governance Provisions**

#### **Sec. 661.100 What is the workforce investment system?**

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this Part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

#### **Sec. 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?**

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs.

~~These~~The WIA regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are ~~not narrowly~~ broadly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of Sec. 661.120 ~~of this subpart.~~

#### **Sec. 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?**

(a) Local ~~Boards~~ *areas* should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act ~~or~~ *and* the regulations *issued under the Act, Federal statutes and regulations governing One-Stop partner programs, or* ~~and~~ with State policies.

(b) State Boards should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and *the* regulations *issued under the Act, as well as Federal statutes and regulations governing One-Stop partner programs.*

### **Subpart B--State Governance Provisions**

#### **Sec. 661.200 What is the State Workforce Investment Board?**

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA sections 111(b)(1)(C)(iii)-(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development, *child support* and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by ~~One-Stop~~ *s* partners, as described in WIA section 121(b) and 20 CFR *662.200 and* 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

*(3) If the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State plan how the member of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.*

~~(j) The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State~~



~~Board, including information about the State Plan prior to submission of the plan, information about membership, and on request, minutes of formal meetings of the State Board. (WIA section 111) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (d) through (f) of this section, for each entity. (WIA sec. 111)~~

***Sec. 661.203 What is meant by the terms “optimum policy making authority” and “expertise relating to [a] program, service or activity”?***

*For purposes of selecting representatives to State and local workforce investment boards:*

*(a) A representative with “optimum policy making authority” is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.*

*(b) A representative with “expertise relating to [a] program, service or activity” includes a person who is an official with a One-stop partner program and a person with documented expertise relating to the One-stop partner program.*

**Sec. 661.205 What is the role of the State Board?**

The State Board must assist the Governor in the:

- (a) Development of the State Plan;
- (b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including--
  - (1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local memorandum of understanding; and
  - (2) Review of local plans;
- (c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;
- (d) Designation of local workforce investment areas,
- (e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);
- (f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);
- (g) Preparation of the annual report to the Secretary described in WIA section 136(d);
- (h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and
- (i) Development of an application for an incentive grant under WIA section 503. (WIA section 111(d).)

***Sec. 661.207 How does the State Board meet its requirement to conduct business in an open manner under the “sunshine provision” of WIA section 111(g)?***

*The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board. This includes information about the State Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the State Board.*

**Sec. 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?**

- (a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the

functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C. 1501 et seq.), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and Sec. 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any such group in the workforce investment system. *The State Board*

*may maintain an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups.*

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b). ~~A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.~~

*(e) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is not considered to have occurred when additional members are added, or when a member is added to fill a vacancy created in an existing membership category.*

(ef) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

## **Sec. 661.220 What are the requirements for the submission of the State Workforce Investment Plan?**

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and ~~these~~the WIA regulations, *including 29 C FR part 37*, and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652.

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by

representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or ~~these~~*the WIA regulations, including 29 CFR part 37*. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

*(3) A plan which is incomplete, or which does not contain sufficient information to determine whether it is consistent with the statutory or regulatory requirements of title I of WIA or of section 8(d) of the Wagner-Peyser Act, will be considered to be inconsistent with those requirements.*

#### **Sec. 661.230 What are the requirements for modification of the State ~~w~~Workforce ~~i~~Investment ~~p~~Plan?**

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

(c) Modifications are required in accordance with the Wagner-Peyser provisions at 20 CFR ~~652.210~~*652.212*.

(d) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original State Plan.

(e) State Plan modifications will be approved by the Secretary based on the approval standard applicable to the original State Plan under Sec. 661.220(e).

#### **Sec. 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?**

(a) A State may submit to the Secretary a unified plan for any of the programs or activities described in WIA section 501(b)(2). This includes the following DOL programs and activities:

(1) The five-year strategic WIA and Wagner-Peyser plan;

(2) Trade adjustment assistance activities and NAFTA--TAA;

(3) Veterans' programs under 38 U.S.C. Chapter 41;

(4) Programs authorized under State unemployment compensation laws;

(5) Welfare-to-Work (WtW) programs; and

(6) Senior Community Service Employment Programs under title V of the Older Americans Act.

(b) For purposes of paragraph (a) of this section:

*(1) a*A State may submit, as part of the unified plan, any plan, application form or any other similar document, that is required as a condition for the approval of Federal funding under the applicable program. These plans include such things as the WIA plan, or the WtW plan. They do not include jointly executed funding instruments, such as grant agreements, or Governor/Secretary Agreements or items such as corrective actions plans.



*(2) A state may submit a unified plan meeting the requirements of the interagency guidance entitled State Unified Plan, Planning Guidance for State Unified Plans Under Section 501 of the Workforce Investment Act of 1998, in lieu of completing the individual State planning guidelines of the programs covered by the unified plan.*

(c) A State which submits a unified plan *covering an activity or program described in subsection 501(b) of WIA that is approved under subsection 501(d) of the Act* will not be required to submit ~~additional planning materials as a condition for approval~~ *any other plan or application in order* to receive Federal funds *to carry out the activity or program*.

(d) Each portion of a unified plan submitted under paragraph (a) of this section is subject to the particular requirements of Federal law authorizing the program. All grantees are still subject to such things as reporting and record-keeping requirements, corrective action plan requirements and other generally applicable requirements.

(e) A unified plan must contain the information required by WIA section 501(c) and will be approved in accordance with the requirements of WIA section 501(d).

#### **Sec. 661.250 What are the requirements for designation of local workforce investment areas?**

(a) The Governor must designate local workforce investment areas in order for the State to receive funding under title I of WIA.

(b) The Governor must take into consideration the factors described in WIA section 116(a)(1)(B) in making designations of local areas. Such designation must be made in consultation with the State Board, and after consultation with chief elected officials. The Governor must also consider comments received through the public comment process described in the State workforce investment plan under Sec. 661.220(d).

(c) The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation. ~~(WIA section 116.)~~

*(d) The Governor of any State that was a single service delivery area State under the Job Training Partnership Act as of July 1, 1998, and only those States, may designate the State as a single local workforce investment area State. (WIA sec. 116)*

#### **Sec. 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?**

The requirements for automatic designation relating to units of local government with a population of 500,000 or more and to rural concentrated employment programs are contained in WIA section 116(a)(2). *The Governor has authority to determine the source of population data to use in making these designations.*

#### **Sec. 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?**

The requirements for temporary and subsequent designation relating to areas that had been designated as service delivery areas under JTPA are contained in WIA section 116(a)(3).

#### **Sec. 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?**

(a) A unit of local government (or combination of units) or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B), which has requested but has been denied its request for designation as a workforce investment area under Secs. 661.260- *through* 661.270, may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 667.640(a).

(c) The Secretary may require that the area be designated as a workforce investment area, if the Secretary determines that:

- (1) The entity was not accorded procedural rights under the State appeals process; or
- (2) The area meets the automatic designation requirements at WIA section 116(a)(2) or the temporary and subsequent designation requirements at WIA section 116(a)(3), as appropriate.

**Sec. 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?**

(a) The State may require Local Boards within a designated region (as defined at 20 CFR 660.300) to:

- (1) Participate in a regional planning process that results in regional performance measures for workforce investment activities under title I of WIA. Regions that meet or exceed the regional performance measures may receive regional incentive grants;
  - (2) Share, where feasible, employment and other types of information that will assist in improving the performance of all local areas in the designated region on local performance measures; and
  - (3) Coordinate the provision of WIA title I services, including supportive services such as transportation, across the boundaries of local areas within the designated region.
- (b) Two or more States may designate a labor market area, economic development region, or other appropriate contiguous subarea of the States as an interstate region. In such cases, the States may jointly exercise the State's functions described in this section.
- (c) Designation of intrastate regions and interstate regions and their corresponding performance measures must be described in the respective State Plan(s). For interstate regions, the roles of the respective governors, State Boards and Local Boards must be described in the respective State Plans.
- (d) Unless agreed to by all affected chief elected officials and the Governor, these regional planning activities may not substitute for or replace the requirements applicable to each local area under other provisions of the WIA. (WIA section 116(a).)

**Subpart C--Local Governance Provisions**

**Sec. 661.300 What is the Local Workforce Investment Board?**

- (a) The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2).
- (b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.
- (c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.
- (d) The Local Board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA section 117(d). (WIA section 117 (d).)
- (e) ~~In the case in which~~ *If* a local area includes more than one unit of general local government in accordance with WIA section 117(c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals nominated or recommended as specified in WIA section 117(b).
- (f) ~~In the case in which~~ *If* the State Plan indicates that the State will be treated as a local area under WIA title I, the Governor may designate the State Board to carry out any of the roles of the Local Board.

**Sec. 661.305 What is the role of the Local Workforce Investment Board?**

- (a) WIA section 117(d) specifies that the Local Board is responsible for:

(1) Developing the five-year local workforce investment plan (Local Plan) and conducting oversight of the One-Stop system, youth activities and employment and training activities under title I of WIA, in partnership with the chief elected official;

(2) Selecting One-Stop operators with the agreement of the chief elected official;

(3) Selecting eligible youth service providers based on the recommendations of the youth council, and identifying eligible providers of adult and dislocated worker intensive services and training services, and maintaining a list of eligible providers with performance and cost information, as required in 20 CFR part 663, subpart E;

(4) Developing a budget for the purpose of carrying out the duties of the Local Board, subject to the approval of the chief elected official;

(5) Negotiating and reaching agreement on local performance measures with the chief elected official and the Governor;

(6) Assisting the Governor in developing the Statewide employment statistics system under the Wagner-Peyser Act;

(7) Coordinating workforce investment activities with economic development strategies and developing employer linkages; and

(8) Promoting private sector involvement in the Statewide workforce investment system through effective connecting, brokering, and coaching activities through intermediaries such as the One-Stop operator in the local area or through other organizations, to assist employers in meeting hiring needs.

(b) The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA sec. 117(h) and Sec. 661.335.

(c) Local Boards which are part of a State designated region for regional planning must carry out the regional planning responsibilities required by the State in accordance with WIA section 116(c) and Sec. 661.290. (*WIA sec. 117.*)

~~(d) The Local Board must conduct business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board, including information about the local plan before submission of the plan, and about membership, the designation and certification of One-Stop operators, and the award of grants or contracts to eligible providers of youth activities, and on request, minutes of formal meetings of the Local Board. (WIA sec. 117.)~~

***Sec. 661.307 How does the Local Board meet its requirement to conduct business in an open manner under the “sunshine provision” of WIA section 117(e)?***

*The Local Board must conduct its business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board. This includes information about the Local Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the Local Board.*

**Sec. 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?**

(a) A Local Board may not directly provide core services, or intensive services, or be designated or certified as a One-Stop operator, unless agreed to by the chief elected official and the Governor.

(b) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA section 117(f)(1). The waiver shall apply for not more than one year. ~~and may be renewed for not more than one additional year.~~ *The waiver may be renewed for additional periods, but for not more than one additional year at a time.*

(c) The restrictions on the provision of core, intensive, and training services by the Local Board, and designation or certification as One-Stop operator, also apply to staff of the Local Board. (WIA sec. 117(f)(1) and (f)(2).)

## **Sec. 661.315 Who are the required members of the Local Workforce Investment Boards?**

(a) The membership of Local Board must be selected in accordance with criteria established under WIA section 117(b)(1) and must meet the requirements of WIA section 117(b)(2). The Local Board must contain two or more members representing the categories described in WIA section 117(b)(2)(A)(ii)-(v), and special consideration must be given to the entities identified in WIA section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. The Local Board must contain at least one member representing each One-Stop partner.

(b) The membership of Local Boards may include individuals or representatives of other appropriate entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

(c) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(d) A majority of the members of the Local Board must be representatives of business in the local area. Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.

(e) Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. Chief elected officials must appoint the labor representatives from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees). (WIA sec. 117(b).)

*(f) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (e) of this section, for each entity.*

## ***Sec. 661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?***

*When there is more than one grant recipient, administrative entity or organization responsible for administration of funds of a particular One-stop partner program in the local area, the chief elected official may appoint one or more members to represent all of those particular partner program entities. In making such appointments, the local elected official may solicit nominations from the partner program entities.*

## **Sec. 661.320 Who must chair a Local Board?**

The Local Board must elect a chairperson from among the business representatives on the board. (WIA sec. 117(b)(5).)

## **Sec. 661.325 What criteria will be used to establish *the* membership of the Local Board?**

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2). The criteria for certification must be described in the State Plan. (WIA sec. 117(c).)

## **Sec. 661.330 Under what circumstances may the State use an alternative entity as the local workforce investment board?**

(a) The State may use any local entity that meets the requirements of WIA section 117(i) to perform the functions of the Local Board. WIA section 117(i) requires that such entity:

(1) Was established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(2) Was in existence on December 31, 1997;

(3)(i) Is a Private Industry Council established under ~~to~~ section 102 of the Job Training Partnership Act, as in effect on December 31, 1997; or

(ii) Is substantially similar to the Local Board described in WIA section 117 (a), (b), and (c) and (h)(1) and (2); and

(4) Includes, at a minimum, two or more representatives of business in the local area and two or more representatives of labor organizations nominated by local labor federations or employees in the local area.

(b)(1) If the Governor certifies an alternative entity to perform the functions of the Local Board; the State workforce investment plan must demonstrate that the alternative entity meets the requirements of WIA section 117(i), set forth in paragraph (a) of this section.

(2) If the alternative entity does not provide for representative membership of each of the categories of required Local Board membership under WIA section 117(b), *including all of the One-stop partner programs*, the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for ~~any such group~~ *the unrepresented membership group* in the local workforce investment system.

*(3) The Local Board may provide an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the local plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups. The Local Board must enter into good faith negotiations over the terms of the MOU with all entities carrying out One-stop partner programs, including programs not represented on the alternate entity.*

(c) If the membership structure of an alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the Local Board. In such case, the chief elected official(s) must establish a new Local Board which meets all of the criteria of WIA section 117(a), (b), and (c) and (h)(1) and (2). ~~A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity that requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.~~

*(d) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category.*

~~(de) In these regulations~~*In 20 CFR parts 660 through 671*, all references to the Local Board must be deemed to also apply to an alternative entity used by a local area. (WIA sec. 117(i).)

### **Sec. 661.335 What is a youth council, and what is its relationship to the Local Board?**

(a) A youth council must be established as a subgroup within each Local Board.

(b) The membership of each youth council must include:

(1) Members of the Local Board, such as educators, *which may include special education personnel*, employers, and representatives of human service agencies, who have special interest or expertise in youth policy;

(2) Members who represent service agencies, such as juvenile justice and local law enforcement agencies;

(3) Members who represent local public housing authorities;

(4) Parents of eligible youth seeking assistance under subtitle B of title I of WIA;

(5) Individuals, including former participants, and members who represent organizations, that have experience relating to youth activities; and

(6) Members who represent the Job Corps, if a Job Corps Center is located in the local area represented by the council.

(c) Youth councils may include other individuals, who the chair of the Local Board, in cooperation with the chief elected official, determines to be appropriate.



(d) Members of the youth council who are not members of the Local Board must be voting members of the youth council and nonvoting members of the Local Board.

**Sec. 661.340 What are the responsibilities of the youth council?**

The youth council is responsible for:

- (a) Coordinating youth activities in a local area;
- (b) Developing portions of the local plan related to eligible youth, as determined by the chairperson of the Local Board;
- (c) Recommending eligible youth service providers in accordance with WIA section 123, subject to the approval of the Local Board;
- (d) Conducting oversight with respect to eligible providers of youth activities in the local area, subject to the approval of the Local Board; and
- (e) Carrying out other duties, as authorized by the chairperson of the Local Board, such as establishing linkages with educational agencies and other youth entities.

**Sec. 661.345 What are the requirements for the submission of the local workforce investment plan?**

(a) WIA section 118 requires that each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Plan.

(b) The Local Board must provide an opportunity for public comment on and input into the development of the local workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

- (1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);
  - (2) Include an opportunity for comment by members of the Local Board and members of the public, including representatives of business and labor organizations;
  - (3) Provide at least a thirty (30) day period for comment, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and
  - (4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.
- (c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

**Sec. 661.350 What are the contents of the local workforce investment plan?**

(a) The local workforce investment plan must meet the requirements of WIA section 118(b). The plan must include:

- (1) An identification of the workforce investment needs of businesses, job-seekers, and workers in the local area;
- (2) An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;
- (3) A description of the One-Stop delivery system to be established or designated in the local area, including:
  - (i) How the Local Board will ensure continuous improvement of eligible providers of services and ensure that such providers meet the employment needs of local employers and participants; and
  - (ii) A copy of the local ~~m~~Memorandum(s) of ~~u~~Understanding between the Local Board and each of the One-Stop partners concerning the operation of the local One-Stop delivery system;
- (4) A description of the local levels of performance negotiated with the Governor and the chief elected official(s) to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the local One-Stop delivery system;

- (5) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area, including a description of the local ITA system and the procedures for ensuring that exceptions to the use of ITA's, if any, are justified under WIA section 134(d)(4)(G)(ii) and 20 CFR 663.430;
  - (6) A description of how the Local Board will coordinate local activities with Statewide rapid response activities;
  - (7) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;
  - (8) A description of the process used by the Local Board to provide opportunity for public comment, including comment by representatives of business and labor organizations, and input into the development of the local plan, prior to the submission of the plan;
  - (9) An identification of the fiscal agent, or entity responsible for the disbursement of grant funds;
  - (10) A description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA sec. 134(d)(4)(G)),
  - (11) A description of the criteria to be used by the Governor and the Local Board, under 20 CFR 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA sections 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator;
  - (12) In cases where an alternate entity functions as the Local Board, the information required at Sec. 661.330(b), and
  - (13) Such other information as the Governor may require.
- (b) The Governor must review completed plans and must approve all such plans within ninety days of their submission, unless the Governor determines in writing that:
- (1) There are deficiencies identified in local workforce investment activities carried out under this subtitle that have not been sufficiently addressed; or
  - (2) The plan does not comply with title I of WIA and ~~these~~*the WIA* regulations, including the required consultations and public comment provisions, *and the nondiscrimination requirements of 29 CFR part 37.*
- (c) In cases where the State is a single local area:
- (1) The Secretary performs the roles assigned to the Governor as they relate to local planning activities.
  - (2) The Secretary issues planning guidance for such States.
  - (3) The requirements found in WIA and in ~~these~~*the WIA* regulations for consultation with chief elected officials apply to the development of State and local plans and to the development and operation of the One-Stop delivery system.
- (d) During program year 2000, if a local plan does not contain all of the elements described in paragraph (a) of this section, the Governor may approve a local plan on a transitional basis. A transitional approval under this paragraph is considered to be a written determination that the local plan is not approved under paragraph (b) of this section.*

#### **Sec. 661.355 When must a local plan be modified?**

The Governor must establish procedures governing the modification of local plans. Situations in which modifications may be required by the Governor include significant changes in local economic conditions, changes in the financing available to support WIA title I and partner-provided WIA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals.

### **Subpart D--Waivers and Work-Flex**

#### **Sec. 661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?**

- (a) The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce investment system.

(b) A waiver may be requested to address impediments to the implementation of a strategic plan, including the continuous improvement strategy, consistent with the key reform principles of WIA. These key reform principles include:

- (1) Streamlining services and information to participants through a One-Stop delivery system;
- (2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;
- (3) Ensuring universal access to core employment-related services;
- (4) Increasing accountability of States, localities and training providers for performance outcomes;
- (5) Establishing a stronger role for Local Boards and the private sector;
- (6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and
- (7) Improving youth programs through services which emphasize academic and occupational learning.

**Sec. 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?**

(a) The Secretary may waive any of the statutory or regulatory requirements of subtitles B and E of title I of WIA, except for requirements relating to:

- (1) Wage and labor standards;
- (2) Non-displacement protections;
- (3) Worker rights;
- (4) Participation and protection of workers and participants;
- (5) Grievance procedures and judicial review;
- (6) Nondiscrimination;
- (7) Allocation of funds to local areas;
- (8) Eligibility of providers or participants;
- (9) The establishment and functions of local areas and local boards; and
- (10) Procedures for review and approval of State and Local plans; and

(b) The Secretary may waive any of the statutory or regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g--49i) except for requirements relating to:

- (1) The provision of services to unemployment insurance claimants and veterans; and
- (2) Universal access to the basic labor exchange services without cost to job seekers.

(c) The Secretary does not intend to waive any of the statutory or regulatory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in Sec. 661.400, except in extremely unusual circumstances where the provision can be demonstrated as impeding reform. (WIA sec. 189(i).)

**Sec. 661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under section 189(i)(4)?**

(a) A Governor may request a general waiver in consultation with appropriate chief elected officials:

- (1) By submitting a waiver plan which may accompany the State's WIA 5-year strategic Plan; or
- (2) After a State's WIA Plan is approved, by directly submitting a waiver plan.

(b) A Governor's waiver request may seek waivers for the entire State or for one or more local areas.

(c) A Governor requesting a general waiver must submit to the Secretary a plan to improve the Statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Strategic Plan goals;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes the individuals affected by the waiver; and

- (5) Describes the processes used to:
  - (i) Monitor the progress in implementing the waiver;
  - (ii) Provide notice to any Local Board affected by the waiver; and
  - (iii) Provide any Local Board affected by the waiver an opportunity to comment on the request; *and*
  - (iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver.*
- (d) The Secretary issues a decision on a waiver request within 90 days after the receipt of the original waiver request.
- (e) The Secretary will approve a waiver request if and only to the extent that:
  - (1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the Statewide workforce investment system;
  - (2) The Secretary determines that the waiver plan meets all of the requirements of WIA section 189(i)(4) and Secs. 661.400- *through* 661.420 ~~of this subpart~~; and
  - (3) The State has executed a ~~m~~Memorandum of ~~u~~Understanding with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.
- (g) The Secretary will issue guidelines under which the States may request general waivers of WIA and Wagner-Peyser requirements. (WIA sec. 189(i).)

#### **Sec. 661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?**

- (a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (work-flex) plan under which the State is authorized to waive, in accordance with the plan:
  - (1) Any of the statutory or regulatory requirements under title I of WIA applicable to local areas, if the local area requests the waiver in a waiver application, except for:
    - (i) Requirements relating to the basic purposes of title I of WIA;
    - (ii) Wage and labor standards;
    - (iii) Grievance procedures and judicial review;
    - (iv) Nondiscrimination;
    - (v) Eligibility of participants;
    - (vi) Allocation of funds to local areas;
    - (vii) Establishment and functions of local areas and local boards;
    - (viii) Review and approval of local plans;
    - (ix) Worker rights, participation, and protection; and
  - (x) Any of the statutory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in Sec. 661.400.
- (2) Any of the statutory or regulatory requirements applicable to the State under sec. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g-49i), except for requirements relating to:
  - (i) The provision of services to unemployment insurance claimants and veterans; and
  - (ii) Universal access to basic labor exchange services without cost to job seekers; and
- (3) Any of the statutory or regulatory requirements under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 et seq.), applicable to State agencies on aging with respect to activities carried out using funds allotted under OAA section 506(a)(3) (42 U.S.C. 3056d(a)(3)), except for requirements relating to:
  - (i) The basic purposes of OAA;
  - (ii) Wage and labor standards;
  - (iii) Eligibility of participants in the activities; and
  - (iv) Standards for agreements.
- (b) A State's workforce flexibility plan may accompany the State's five-year Strategic Plan or may be submitted separately. If it is submitted separately, the workforce flexibility plan must identify related provisions in the State's five-year Strategic Plan.
- (c) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:
  - (1) The process by which local areas in the State may submit and obtain State approval of applications for waivers;

(2) The statutory and regulatory requirements of title I of WIA that are likely to be waived by the State under the workforce flexibility plan;

(3) The statutory and regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(4) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(5) The outcomes to be achieved by the waivers described in paragraphs (c) (1) to (4) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIA; and

(6) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(d) The Secretary may approve a workforce flexibility plan for a period of up to five years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State.

#### **Sec. 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?**

(a)(1) Under work-flex waiver authority a State must not waive the WIA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in Sec. 661.430(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at Secs. 661.410- *through* 661.420 *of this subpart*.

(b) As required in Sec. 661.430(c)(5), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. Once approved, a State's work-flex designation is conditioned on the State demonstrating it has met the agreed-upon outcomes contained in its workforce flexibility plan.

### **PART 662--DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT**

#### **Subpart A--General Description of the One-Stop Delivery System**

Sec.

662.100 What is the One-Stop delivery system?

#### **Subpart B--One-Stop Partners and the Responsibilities of Partners**

662.200 Who are the required One-Stop partners?

662.210 What other entities may serve as One-Stop partners?

662.220 What entity serves as the One-Stop partner for a particular program in the local area?

662.230 What are the responsibilities of the required One-Stop partners?

662.240 What are a program's applicable core services?

662.250 Where and to what extent must required One-Stop partners make core services available?

662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?

662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?

662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?



## Subpart C--Memorandum of Understanding for the One-Stop Delivery System

662.300 What is the Memorandum of Understanding?

662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

## Subpart D--One-Stop Operators

662.400 Who is the One-Stop operator?

662.410 How is the One-Stop operator selected?

662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?

662.430 ~~Under what conditions may existing One-Stop delivery systems be certified to act as the One-Stop operator?~~ *Under what conditions may One-Stop operators designated to operate in a One-Stop delivery system established prior to the enactment of WIA be designated to continue to act as a One-Stop operator under WIA without meeting the requirements of Sec. 662.410(b)?*

Authority: Section 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c).

## Subpart A--General Description of One-Stop Delivery System

### Sec. 662.100 What is the One-Stop delivery system?

(a) In general, the One-Stop delivery system is a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) collaborate to create a seamless system of service delivery that will enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(b) Title I of WIA assigns responsibilities at the local, State and Federal level to ensure the creation and maintenance of a One-Stop delivery system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance.

(c) The system must include at least one comprehensive physical center in each local area that must provide the core services specified in WIA section 134(d)(2), and must provide access to other programs and activities carried out by the One-Stop partners.

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. These arrangements may include:

(1) A network of affiliated sites that can provide one or more partners' programs, services and activities at each site;

(2) A network of One-Stop partners through which each partner provides services that are linked, physically or technologically, to an affiliated site that assures individuals are provided information on the availability of core services in the local area; and

(3) Specialized centers that address specific needs, such as those of dislocated workers.

(e) The design of the local area's One-Stop delivery system, including the number of comprehensive centers and the supplementary arrangements, must be described in the local plan and be consistent with the ~~m~~Memorandum of ~~u~~Understanding executed with the One-Stop partners.

## Subpart B--One-Stop Partners and the Responsibilities of Partners

### Sec. 662.200 Who are the required One-Stop partners?

(a) WIA section 121(b)(1) identifies the entities that are required partners in the local One-Stop systems.

(b) The required partners are the entities that ~~carry-out~~*are responsible for administering the following programs and activities in the local area:*

(1) Programs authorized under title I of WIA, serving:

- (i) Adults;
- (ii) Dislocated workers;
- (iii) Youth;
- (iv) Job Corps;
- (v) Native American programs;
- (vi) Migrant and seasonal farmworker programs; and
- (vii) Veterans' workforce programs; (WIA sec. 121(b)(1)(B)(i).)
- (2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.); (WIA sec. 121(b)(1)(B)(ii).)
- (3) Adult education and literacy activities authorized under title II of WIA; (WIA sec. 121(b)(1)(B)(iii).)
- (4) ~~Vocational rehabilitation p~~Programs authorized under parts A and B of title I of the Rehabilitation Act (29 U.S.C. 720 et seq.); (WIA sec. 121(b)(1)(B)(iv).)
- (5) Welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5) et seq.); (WIA sec. 121(b)(1)(B)(v).)
- (6) Senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.); (WIA sec. 121(b)(1)(B)(vi).)
- (7) Postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.); (WIA sec. 121(b)(1)(B)(vii).)
- (8) Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.); (WIA sec. 121(b)(1)(B)(viii).)
- (9) Activities authorized under chapter 41 of title 38, U.S.C. (local veterans' employment representatives and disabled veterans outreach programs); (WIA sec. 121(b)(1)(B)(ix).)
- (10) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 et seq.); (WIA sec. 121(b)(1)(B)(x).)
- (11) Employment and training activities carried out by the Department of Housing and Urban Development; (WIA sec. 121(b)(1)(B)(xi).) and
- (12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (WIA sec. 121(b)(1)(B)(xii).)

#### **Sec. 662.210 What other entities may serve as One-Stop partners?**

- (a) WIA provides that other entities that carry out a human resource program, including Federal, State, or local programs and programs in the private sector may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation.
- (b) Additional partners may include:
  - (1) TANF programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);
  - (2) Employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));
  - (3) Work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));
  - (4) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and
  - (5) ~~Other~~Other appropriate *Federal, State or local* programs, including programs related to transportation and housing *and programs in the private sector*. (WIA section 121(b)(2).)

#### **Sec. 662.220 What entity serves as the One-Stop partner for a particular program in the local area?**

- (a) The ``entity'' that carries out the program and activities listed in Secs. 662.200 and 662.210 ~~of this subpart,~~ and, therefore, serves as the One-Stop partner is the grant recipient, administrative entity or organization responsible for administering the funds of the specified program in the local area. The term ``entity'' does not include the service providers that contract with or are subrecipients of the local administrative entity. For programs that do not include local administrative entities, the responsible State Agency should be the partner. Specific entities for specific programs are identified in paragraph (b) of this section. *If a program or activity listed in Sec. 662.200 is not carried out in a local area, the requirements relating to a required One-Stop partner are not applicable to such program or activity in that local One-Stop system.*

(b)(1) For title II of WIA, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible entity. The State eligible entity may designate an eligible provider, *or a consortium of eligible providers*, as the “entity” for this purpose;

(2) For title I, Part A, of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agency or designated unit specified under section 101(a)(2) that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; and

(3) Under WIA, the national programs, including Job Corps, the WIA Indian and Native American program, the Migrant and Seasonal Farmworkers program, and the Veterans’ Workforce Investment program, are required One-Stop partners. Local Boards must include them in the One-Stop delivery system where they are present in their local area. In local areas where the national programs are not present, States and Local Boards should take steps to ensure that customer groups served by these programs have access to services through the One-Stop delivery system.

#### **Sec. 662.230 What are the responsibilities of the required One-Stop partners?**

All required partners must:

(a) Make available to participants through the One-Stop delivery system the core services that are applicable to the partner’s programs; (WIA section 121(b)(1)(A).)

(b) Use a portion of funds made available to the partner’s program, to the extent not inconsistent with the Federal law authorizing the partner’s program, to:

(1) Create and maintain the One-Stop delivery system; and

(2) Provide core services; (WIA sec. 134(d)(1)(B).)

(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of Sec. 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c));

(d) Participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws; (WIA sec. 121(b)(1)(B).) and

(e) ~~Serve as a representative~~*Provide representation* on the local ~~w~~Workforce ~~i~~Investment ~~b~~Board. (WIA sec. 117(b)(2)(A)(vi).)

#### **Sec. 662.240 What are a program’s applicable core services?**

(a) The core services applicable to any One-Stop partner program are those services described in paragraph (b) of this section, that are authorized and provided under the partner’s program.

(b) The core services identified in section 134(d)(2) of the WIA are:

(1) Determinations of whether the individuals are eligible to receive assistance under subtitle B of title I of WIA;

(2) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the One-Stop delivery system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance, and where appropriate, career counseling;

(5) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including--

(i) Job vacancy listings in such labor market areas;

(ii) Information on job skills necessary to obtain the listed jobs; and

(iii) Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of program performance information and program cost information on:

(i) Eligible providers of training services described in WIA section 122;

(ii) Eligible providers of youth activities described in WIA section 123;

(iii) Providers of adult education described in title II;

(iv) Providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.); and

(v) Providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(7) Provision of information on how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop delivery system in the local area;

(8) Provision of accurate information relating to the availability of supportive services, including, at a minimum, child care and transportation, available in the local area, and referral to such services, as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for--

(i) Welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) available in the local area; and

(ii) Programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(11) Followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under subtitle (B) of title I of WIA who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

#### **Sec. 662.250 Where and to what extent must required One-Stop partners make core services available?**

(a) At a minimum, the core services that are applicable to the program of the partner under Sec. 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center. The adult and dislocated worker program partners are required to make all of the core services listed in Sec. 662.240 available at the center in accordance with 20 CFR 663.100(b)(1).

(b) The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner, as described in the MOU.

(c) The responsibility of the partner for the provision of core services must be proportionate to the use of the services at the comprehensive One-Stop center by the individuals attributable to the partner's program. The specific method of determining each partner's proportionate responsibility must be described in the MOU.

(d) For purposes of this part, individuals attributable to the partner's program may include individuals who are referred through the comprehensive One-Stop center and enrolled in the partner's program after the receipt of core services, who have been enrolled in the partner's program prior to receipt of the applicable core services at the center, who meet the eligibility criteria for the partner's program and who receive an applicable core service, or who meet an alternative definition described in the MOU.

(e) Under the MOU, the provision of applicable core services at the center by the One-Stop partner may be supplemented by the provision of such services through the networks of affiliated sites and networks of One-Stop partners described in WIA section 134(c)(2).

#### **Sec. 662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?**

In addition to the provision of core services, One-Stop partners must provide access to the other activities and programs carried out under the partner's authorizing laws. The access to these services must be described in the local MOU. 20 CFR part 663 describes the specific requirements relating to the provision of core, intensive, and training services through the One-Stop system that apply to the adult and the dislocated worker programs authorized under title I of WIA. Additional requirements apply to the provision of all labor exchange services under the Wagner-Peyser Act. (WIA sec. 134(c)(1)(D).)

**Sec. 662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?**

The MOU must describe the particular funding arrangements for services and operating costs of the One-Stop delivery system. Each partner must contribute a fair share of the operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. There are a number of methods, consistent with the requirements of the relevant OMB circulars, that may be used for allocating costs among the partners. Some of these methodologies include allocations based on direct charges, cost pooling, indirect cost rates and activity-based cost allocation plans. Additional guidance relating to cost allocation methods may be issued by the Department in consultation with the other appropriate Federal agencies.

**Sec. 662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?**

No. The requirements of the partner's program continue to apply. The Act intends to create a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. While the overall effect is to provide universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program. (WIA sec. 121(b)(1).)

**Subpart C--Memorandum of Understanding of the One-Stop Delivery System**

**Sec. 662.300 What is the Memorandum of Understanding?**

(a) The Memorandum of Understanding (MOU) is an agreement developed and executed between the Local Board, with the agreement of the chief elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area.

(b) The MOU must contain the provisions required by WIA section 121(c)(2). These provisions cover services to be provided through the One-Stop delivery system; the funding of the services and operating costs of the system; and methods for referring individuals between the One-Stop operators and partners. The MOU's provisions also must determine the duration and procedures for amending the MOU, and may contain any other provisions that are consistent with WIA title I and ~~these~~WIA regulations agreed to by the parties. (WIA sec. 121(c).)

**Sec. 662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?**

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local One-Stop delivery system for the Local Board, *chief elected official* and all partners, or the Local Board, *chief elected official* and the partners may decide to enter into separate agreements between the Local Board (*with the agreement of the chief elected official*) and one or more partners. Under either approach, the requirements described in ~~Sec. 662.310~~ *this subpart* apply. Since funds are generally appropriated annually, financial agreements may be negotiated with each partner annually to clarify funding of services and operating costs of the system under the MOU.

(b) WIA emphasizes full and effective partnerships between Local Boards, *chief elected officials* and One-Stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, *chief elected officials* and partners may request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. The Local Board and partners must document the negotiations and efforts that have taken place. Any failure to execute an MOU between a Local Board and a required partner must be reported by the Local Board and the required partner to the Governor or State Board, and the State agency responsible for administering the partner's program, and by the Governor or the State Board and the responsible State agency to the Secretary of



Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program. (WIA sec. 121(c).)

(c) If an impasse has not been resolved through the alternatives available under this section any partner that fails to execute an MOU may not be permitted to serve on the Local Board. In addition, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants awarded on the basis of local coordination of activities under 20 CFR 665.200(d)(2). *These sanctions are in addition to, not in lieu of, any other remedies that may be applicable to the Local Board or to each partner for failure to comply with the statutory requirement.*

## **Subpart D--One-Stop Operators**

### **Sec. 662.400 Who is the One-Stop operator?**

(a) The One-Stop operator is the entity that performs the role described in paragraph (c) of this section. The types of entities that may be selected to be the One-Stop operator include:

- (1) A postsecondary educational institution;
- (2) An Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;
- (3) A private, nonprofit organization (including a community-based organization);
- (4) A private for-profit entity;
- (5) A government agency; and
- (6) Another interested organization or entity.

(b) One-Stop operators may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

(c) The agreement between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center, to being the primary provider of services within the center, *to coordinating activities throughout the One-Stop system.* (WIA sec. 121(d).)

### **Sec. 662.410 How is the One-Stop Operator selected?**

(a) The Local Board, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area.

(b) The One-Stop operator is designated or certified:

- (1) Through a competitive process, ~~or~~
- (2) Under an agreement between the Local Board and a consortium of entities that includes at least three or more of the required One-Stop partners identified at Sec. 662.200, *or*
- (3) *Under the conditions described in Secs. 662.420 or 662.430.* (WIA sec. 121(d).)

(c) *The designation or certification of the One-Stop operator must be carried out in accordance with the "sunshine provision" at 20 CFR 661-307.*

### **Sec. 662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?**

(a) The Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor.

(b) ~~The designation or certification must be made publicly, in accordance with the requirements of the "sunshine provision" in WIA section 117(e), and must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)~~ *The designation or certification must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)*

### **Sec. 662.430 ~~Under what conditions may existing One-Stop delivery systems be certified to act as the One-Stop operator?~~ Under what conditions may One-Stop operators designated to operate in a One-Stop**

*delivery system established prior to the enactment of WIA be designated to continue as a One-Stop operator under WIA without meeting the requirements of Sec. 662.410(b)?*

*Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity that has been serving as a One-Stop operator in a One-Stop delivery system established prior to the enactment of WIA (August 7, 1998) to continue to serve as a One-Stop operator without meeting the requirements for designation under Sec. 662.410(b) if the local One-Stop delivery system is modified, as necessary, to meet the other requirements of this part, including the requirements relating to the inclusion of One-Stop partners, the execution of the MOU, and the provision of services. (WIA sec. 121(e).)*

~~Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity as a One-Stop operator under the following circumstances:~~

- ~~—(a) A One-Stop delivery system, consistent with the scope and meaning of the term in WIA section 134(c), existed in the local area prior to August 7, 1998;~~
- ~~—(b) The certification is consistent with the requirements of:~~
  - ~~—(1) WIA section 121(b) and;~~
  - ~~—(2) the Memorandum(s) of Understanding; and~~
- ~~—(c) The certification must be made publicly, in accordance with the “sunshine provision” at WIA section 117(e). (WIA section 121(e).)~~

## **PART 663--ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT**

### **Subpart A-- Delivery of Adult and Dislocated Worker Services Through the One-Stop Delivery System**

Sec.

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663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?

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Authority: Section 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c).

## Subpart A--Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

### Sec. 663.100 What is the role of the adult and dislocated worker programs in the One-Stop delivery system?

(a) The One-Stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are organized into three levels: core, intensive, and training.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required One-Stop partner and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions:

(1) Core services for adults and dislocated workers must be made available in at least one comprehensive One-Stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) The One-Stop centers also make intensive services available to adults and dislocated workers, as needed, either by the One-Stop operator directly or through contracts with service providers that are approved by the Local Board.

(3) Through the One-Stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITA's) and access to lists of eligible providers *and programs* of training. These lists contain quality consumer information, including cost and performance information for each of the providers *programs*, so that participants can make informed choices on where to use their ITA's. (ITA's are more fully discussed in subpart D of this part.)

### Sec. 663.105 When must adults and dislocated workers be registered?

(a) Registration is the process for collecting information for supporting a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and determined eligible.

(c) ~~EEO data must be collected on individuals during the registration process.~~ *EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient.*

**Sec. 663.110 What are the eligibility criteria for *core services* for adults in the adult and dislocated worker program?**

To be an eligible *to receive core services as an* adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for the dislocated worker programs, an eligible adult must meet the criteria of Sec. 663.115 ~~of this subpart~~. *Eligibility criteria for intensive and training services are found at Secs. 663.220 and 663.310.*

**Sec. 663.115 What are the eligibility criteria for *core services* for dislocated workers in the adult and dislocated worker programs?**

(a) To be an eligible *to receive core services as a* dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of “dislocated worker” at WIA section 101(9). *Eligibility criteria for intensive and training services are found at Secs. 663.220 and 663.310.*

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual’s eligibility as a dislocated worker, consistent with the definition at WIA section 101(9). These policies and procedures may address such conditions as:

- (1) What constitutes a “general announcement” of plant closing under WIA section 101(9)(B)(ii) or (iii); and
- (2) What constitutes “unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters” for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

**Sec. 663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?**

(a) Yes, ~~T~~here are two significant differences from the eligibility requirements under the Job Training Partnership Act.

(b) Under the dislocated worker program in JTPA, displaced homemakers are defined as “additional dislocated workers” and are only eligible to receive services if the Governor determines that providing such services would not adversely affect the delivery of services to the other eligible dislocated workers. Under WIA section 101(9), displaced homemakers who meet the definition at WIA section 101(10) are eligible dislocated workers without any additional determination.

(c) The definition of displaced homemaker under JTPA included individuals who had been dependent upon public assistance under Aid for Families with Dependent Children (AFDC) as well as those who had been dependent on the income of another family member. The definition in WIA section 101(10) includes only those individuals who were dependent on a family member’s income. Those individuals who have been dependent on public assistance may be served in the adult program.

**Sec. 663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?**

(a) WIA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide core, intensive and training services through the One-Stop delivery system. Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers. *There are different eligibility criteria for each of these types of services, which are described at Secs. 663.110, 663.115, 663.220 and 663.310.*

(b) WIA title I funds may also be used to provide the other services described in WIA section 134(e):

- (1) Discretionary One-Stop delivery activities, including:
  - (i) Customized screening and referral of qualified participants in training services to employment; and
  - (ii) Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.
- (2) Supportive services, including needs-related payments, as described in subpart H of this part.



### **Sec. 663.150 What core services must be provided to adults and dislocated workers?**

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR ~~662.240~~ ~~662.220~~ must be provided in each local area through the One-Stop delivery system.

(b) Followup services must be made available, *as appropriate*, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

### **Sec. 663.155 How are core services delivered?**

Core services must be provided through the One-Stop delivery system. Core services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of core services when approved by the chief elected official and the Governor in accordance with the requirements of WIA section 117(f)(2) and 20 CFR 661.310.

### **Sec. 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?**

(a) Yes. At a minimum, an individual must receive at least one core service, such as an initial assessment or job search and placement assistance, before receiving intensive services. The initial assessment ~~determines~~*provides preliminary information about* the individual's skill levels, aptitudes, *interests*, and supportive services needs. The job search and placement assistance helps the individual determine whether he or she is unable to obtain employment, and thus requires more intensive services to obtain employment. The decision on which core services to provide, and the timing of their delivery, may be made on a case-by-case basis at the local level depending upon the needs of the participant.

(b) A determination of the need for intensive services under Sec. 663.220, as established by the initial assessment or the individual's inability to obtain employment through the core services provided, must be contained in the participant's case file.

### **Sec. 663.165 How long must an individual be in core services in order to be eligible for intensive services?**

There is no Federally-required minimum time period for participation in core services before receiving intensive services. ~~†(WIA section 134(d)(3).†)~~

## **Subpart B--Intensive Services**

### **Sec. 663.200 What are intensive services for adults and dislocated workers?**

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector. *Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.*

### **Sec. 663.210 How are intensive services delivered?**

(a) Intensive services must be provided through the One-Stop delivery system, *including specialized One-Stop centers*. Intensive services may be provided directly by the One-Stop operator or through contracts with service providers, *which may include contracts with public, private for-profit, and private non-profit service providers*

(including specialized service providers), that are approved by the Local Board. (WIA secs. 117(d)(2)(D) and 134(d)(3)(B).)

(b) The Local Board may only be a provider of intensive services when approved by the chief elected official and the Governor in accordance with WIA section 117(f)(2) and 20 CFR 661.310.

#### **Sec. 663.220 Who may receive intensive services?**

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, have received at least one core service and are unable to obtain employment through core services, and are determined by a One-Stop operator to be in need of more intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, have received at least one core service, and are determined by a One-Stop operator to be in need of intensive services to obtain or retain employment that leads to self-sufficiency, as described in Sec. 663.230.

#### **Sec. 663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to “self-sufficiency”?**

State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA section 101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage. *The special needs of individuals with disabilities or other barriers to employment should be taken into account when setting criteria to determine self-sufficiency.*

#### **Sec. 663.240 Are there particular intensive services an individual must receive prior to receiving training services under WIA section 134(d)(4)(A)(i)?**

(a) Yes. ~~At~~ At a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.

(b) The case file must contain a determination of need for training services under Sec. 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

#### **Sec. 663.245 What is the individual employment plan?**

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant’s employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

#### **Sec. 663.250 How long must an individual participant be in intensive services to be eligible for training services?**

There is no Federally-required minimum time period for participation in intensive services before receiving training services. *The period of time an individual spends in intensive services should be sufficient to prepare the individual for training or employment.* (WIA section 134(d)(4)(A)(i).)

### **Subpart C--Training Services**

#### **Sec. 663.300 What are training services for adults and dislocated workers?**

Training services are listed in WIA section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.

### **Sec. 663.310 Who may receive training services?**

Training services may be made available to employed and unemployed adults and dislocated workers who:

(a) Have met the eligibility requirements for intensive services, have received at least one intensive service under Sec. 663.240, and have been determined to be unable to obtain or retain employment through such services;

(b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;

(c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

(d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including *such sources as Welfare-to-Work, State-funded training funds, Trade Adjustment Assistance and Federal Pell Grants* established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at Sec. 663.320 and WIA section 134(d)(4)(B)); and

(e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIA section 134(d)(4)(E) and Sec. 663.600. [WIA section 134(d)(4)(A).]

### **Sec. 663.320 What are the requirements for coordination of WIA training funds and other grant assistance?**

(a) WIA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section.

(b) Program operators must coordinate training funds available and make funding arrangements with One-Stop partners and other entities to apply the provisions of paragraph (a) of this section. Training providers must consider the availability of Pell Grants and other sources of grants to pay for training costs, so that WIA funds supplement other sources of training grants.

(c) A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIA participant for education-related expenses. (WIA section 134(d)(4)(B).)

### **Subpart D--Individual Training Accounts**

### **Sec. 663.400 How are training services provided?**

Except under the three conditions described in WIA section 134(d)(4)(G)(ii) and Sec. 663.430(a), the Individual Training Account (ITA) is established for eligible individuals to finance training services. Local Boards may only provide training services under Sec. 663.430 if they receive a waiver from the Governor and meet the requirements of 20 CFR 661.310 and WIA section 117(f)(1). (WIA section 134(d)(4)(G).)

### **Sec. 663.410 What is an Individual Training Account?**

The ITA is established on behalf of a participant. WIA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager. Payments from ITA's may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or

other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course. (WIA section 134(d)(4)(G).)

#### **Sec. 663.420 Can the duration and amount of ITA's be limited?**

(a) Yes. The State or Local Board may impose limits on ITA's, such as limitations on the dollar amount and/or duration.

(b) Limits to ITA's may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITA's.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but should not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. *ITA limitations may provide for exceptions to the limitations in individual cases.*

#### **Sec. 663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?**

(a) Contracts for services may be used instead of ITA's only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITA's. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) in this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in ~~measures appropriate to the program including~~ *the delivery of services to hard to serve participant populations through such means as* program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3) of this section, special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

(1) Individuals with substantial language or cultural barriers;

(2) Offenders;

(3) Homeless individuals; and

(4) Other hard-to-serve populations as defined by the Governor.

#### **Sec. 663.440 What are the requirements for consumer choice?**

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the One-Stop center, must make available to customers the State list of eligible providers required in WIA section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and

customized training required under WIA section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA sections 122(e) and (h).

(c) An individual who has been determined eligible for training services under Sec. 663.310 may select a provider described in paragraph (b) of this section after consultation with a case manager. Unless the program has exhausted *training* funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIA.

## Subpart E--Eligible Training Providers

### Sec. 663.500 What is the purpose of this subpart?

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. Local Boards, in partnership with the State, identify training providers *and programs* whose performance qualifies them to receive WIA funds to train adults and dislocated workers. *In order to maximize customer choice and assure that all significant population groups are served, States and local areas should administer the eligible provider process in a manner to assure that significant numbers of competent providers, offering a wide variety of training programs and occupational choices, are available to customers.* After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers to make an informed choice. The ability of providers to successfully perform, the procedures State and Local Boards use to establish eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system. This subpart describes the process for determining eligible training providers.

### Sec. 663.505 What are ~~E~~eligible ~~P~~providers of ~~T~~training ~~S~~services?

(a) Eligible providers of training services are described in WIA section 122. They are those entities eligible to receive WIA title I-B funds to provide training services to eligible adult and dislocated worker customers.

(b) In order to provide training services under WIA title I-B, a provider must meet the requirements of this subpart and WIA section 122.

(1) These requirements apply to the use of WIA title I adult and dislocated worker funds to provide training:

(i) To individuals using ITA's to access training through the eligible provider list; and

(ii) To individuals for training provided through the exceptions to ITA's described at Sec. 663.430(a)(2) and (a)(3).

(2) These requirements apply to all organizations providing training to adult and dislocated workers, including:

(i) Postsecondary educational institutions providing a program described in section 122(a)(2)(A)(ii);

(ii) Entities that carry out programs under the National Apprenticeship Act (29 U.S.C. 50 et seq.);

(iii) Other public or private providers of a program of training services described in WIA section 122(a)(2)(C);

(iv) Local Boards, if they meet the conditions of WIA section 117(f)(1), and

(v) Community-based organizations and other private organizations providing training under Sec. 663.430.

(c) Provider eligibility procedures must be established by the Governor, as required by this subpart. Different procedures are described in WIA for determinations of "initial" and "subsequent" eligibility. Because the processes are different, they are discussed separately.

### Sec. 663.508 What is a "program of training services"?

A program of training services is *one or more courses or classes, or a structured regimen, that upon successful completion, leads to:*



~~—(a) One or more courses or classes that, upon successful completion, leads to:~~

~~(1a) A certificate, an associate degree, or baccalaureate degree, or~~

~~(2b) A competency or skill recognized by employers, or~~ *The skills or competencies needed for a specific job or jobs, an occupation, occupational group, or generally, for many types of jobs or occupations, as recognized by employers and determined prior to training.*

~~(b) A training regimen that provides individuals with additional skills or competencies generally recognized by employers.~~

#### **Sec. 663.510 Who is responsible for managing the eligible provider process?**

(a) The State and the Local Boards each have responsibilities for managing the eligible provider process.

(b) The Governor must establish eligibility criteria for certain providers to become initially eligible and must set minimum levels of performance for all providers to remain subsequently eligible.

(c) The Governor must designate a State agency (called “designated State agency”) to assist in carrying out WIA section 122. The designated State agency is responsible for:

(1) Developing and maintaining the State list of eligible providers *and programs*, which is comprised of lists submitted by Local Boards;

(2) *Determining if programs meet performance levels, including* ~~V~~verifying the accuracy of the information on the State list, in consultation with the Local Boards, removing ~~providers who~~*programs that* do not meet program performance levels, and taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);

(3) Disseminating the State list, accompanied by performance and cost information relating to each provider, to One-Stop operators throughout the State.

(d) The Local Board must:

(1) Accept applications for initial eligibility from certain postsecondary institutions and entities providing apprenticeship training;

(2) Carry out procedures prescribed by the Governor to assist in determining the initial eligibility of other providers;

(3) Carry out procedures prescribed by the Governor to assist in determining the subsequent eligibility of all providers;

(4) Compile a local list of eligible providers, collect the performance and cost information and any other required information relating to providers;

(5) Submit the local list and information to the designated State agency;

(6) Ensure the dissemination and appropriate use of the State list through the local One-Stop system;

(7) Consult with the designated State agency in cases where termination of an eligible provider is contemplated because inaccurate information has been provided; and

(8) Work with the designated State agency in cases where the termination of an eligible provider is contemplated because of violations of the Act.

(e) The Local Board may:

(1) Make recommendations to the Governor on the procedures to be used in determining initial eligibility of certain providers;

(2) Increase the levels of performance required by the State for local providers to maintain subsequent eligibility;

(3) Require additional verifiable program-specific information from local providers to maintain subsequent eligibility.

#### **Sec. 663.515 What is the process for initial determination of provider eligibility?**

*(a) To be eligible to receive adult or dislocated worker training funds under title I of WIA, all providers must submit applications to the Local Boards in the areas in which they wish to provide services. The application must describe each program of training services to be offered.*

~~(ab) For postsecondary educational institutions that are programs eligible to receive assistance under title IV of the Higher Education Act, and that provide a program that leads to an associate or baccalaureate degree or certificate, and for entities carrying out apprenticeship programs registered under the National Apprenticeship Act (NAA), and the providers of such programs, to be initially eligible to receive adult or dislocated worker training funds under title I of WIA, the institution or entity must submit an application to the Local Board(s) for the local area(s) in which the provider desires to provide training services that describes each program of training services, as defined in Sec. 663.508, that leads to such a degree or certificate or is registered under the National Apprenticeship Act. Local Boards determine the procedures to use in making an application. The procedures established by the Local Board must specify the timing, manner, and contents of the required application.~~

~~(b) Local Boards determine the procedures to use in making an application under paragraph (a) of this section. The Local Board procedures must specify the timing, manner, and contents of the required application.~~

(c) For ~~other providers~~, *programs not eligible under title IV of the HEA or registered under the NAA, and for providers not eligible under title IV of the HEA or carrying out apprenticeship programs under NAA:*

(1) The Governor must develop a procedure for use by Local Boards for determining the eligibility of other providers, after

(i) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State; and

(ii) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure.

*(iii) Designating a specific time period for soliciting and considering the recommendations of Local Boards and provider (Note: Should be "providers"), and for providing an opportunity for public comment.*

(2) The procedure must be described in the State Plan.

(3)(i) The procedure must require that the provider must submit an application to the Local Board at such time and in such manner as may be required, which contains a description of the program of training services;

(ii) If the provider provides a program of training services on the date of application, the procedure must require that the application include an appropriate portion of the performance information and program cost information described in Sec. 663.540 of this subpart, and that the program meet appropriate levels of performance;

(iii) If the provider does not provide a program of training services on that date, the procedure must require that the provider meet appropriate requirements specified in the procedure. (WIA section 122(b)(2)(D).)

(4) Programs of training services provided by postsecondary educational institutions that do not lead to an associate or baccalaureate degree or certificate and apprenticeship programs that are not registered under the National Apprenticeship Act must be determined initially eligible under the provisions of this paragraph (c).

(d) The Local Board must include providers that meet the requirements of paragraphs (a) and (c) of this section on a local list and submit the list to the designated State agency. The State agency has 30 days to verify the information relating to the providers under paragraph (c) of this section. After the agency verifies that the provider meets the criteria for initial eligibility, or 30 days have elapsed, whichever occurs first, the provider is initially eligible as a provider of training services. The providers submitted under paragraph (a) of this section are initially eligible without State agency review. (WIA section 122(e).)

### **Sec. 663.530 Is there a time limit on the period of initial eligibility for training providers?**

Yes. Under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers. States may require that these performance requirements be met one year from the date that initial eligibility was determined, or may require all eligible providers to submit performance information by the same date each year. If the latter approach is adopted, the Governor may exempt eligible providers whose determination of initial eligibility occurs within six months of the date of submissions. The effect of this requirement is that no training provider may have a period of initial eligibility that exceeds eighteen months. *In the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.*

### **Sec. 663.535 What is the process for determination of the subsequent eligibility of a provider?**

(a) The Governor must develop a procedure for the Local Board to use in determining the subsequent eligibility of all eligible training providers determined initially eligible under Sec. 663.515 (ab) and (c), after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State, and

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

*(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.*

(b) The procedure must be described in the State Plan.

(c) The procedure must require that:

(1) Providers annually submit performance and cost information as described at WIA sections 122(d)(1) and (2), for each program of training services for which the provider has been determined to be eligible, in a time and manner determined by the Local Board;

(2) Providers and programs annually meet minimum performance levels described at WIA section 122(c)(6), as demonstrated utilizing UI quarterly wage records where appropriate.

(d) The provider's program's performance information must meet the minimum acceptable levels established under paragraph (c)(2) of this section to remain eligible;

(e) Local Boards may require higher levels of performance for local providers' programs than the levels specified in the procedures established by the Governor. (WIA sections 122(c)(5) and (c)(6).)

(f) The State procedure must require Local Boards to take into consideration:

(1) The specific economic, geographic and demographic factors in the local areas in which providers seeking eligibility are located, and

(2) The characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

(g) The Local Board retains those providers' programs on the local list that meet the required performance levels and other elements of the State procedures and submits the list, accompanied by the performance and cost information, and any additional required information, to the designated State agency. If the designated State agency determines within 30 days from the receipt of the information that the provider's program does not meet the performance levels established under paragraph (c)(2) of this section, the provider's program may be removed from the list. A provider's program retained on the local list and not removed by the designated State agency is considered an eligible provider of training services.

### **Sec. 663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?**

(a) Eligible providers of training services must submit, at least annually, under procedures established by the Governor under Sec. 663.535(c):

(1) Verifiable program-specific performance information, including:

(i) The information described in WIA section 122(d)(1)(A)(i) for all individuals participating in the programs of training services, including individuals who are not receiving assistance under WIA section 134 and individuals who are receiving such assistance; and

(ii) The information described in WIA section 122(d)(1)(A)(ii) relating only to individuals receiving assistance under the WIA adult and dislocated worker program who are participating in the applicable program of training services; and

(2) Information on program costs (such as tuition and fees) for WIA participants in the program.

(b) Governors may require any additional verifiable performance information (such as information described at WIA section 122(d)(2)) that the Governor determines to be appropriate to obtain subsequent eligibility, including information regarding all participating individuals as well as individuals receiving assistance under the WIA adult and dislocated worker program.

(c) ~~If the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information,~~ *Governors must establish procedures by which providers can demonstrate if the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information. If, through these procedures, providers demonstrate that they experience such extraordinary costs:*

(1) The Governor or Local Board must provide access to cost- effective methods for the collection of the information; or

(2) The Governor must provide additional resources to assist providers in the collection of the information from funds for Statewide workforce investment activities reserved under WIA sections 128(a) and 133(a)(1).

(d) The Local Board and the designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from a provider for purposes of enabling the provider to fulfill the applicable requirements of this section, if the information is substantially similar to the information otherwise required under this section.

#### **Sec. 663.550 How is eligible provider information developed and maintained?**

(a) The designated State agency must maintain a list of all eligible training *programs and* providers in the State (the ``State list’’).

(b) The State list is a compilation of the eligible *programs and* providers identified or retained by local areas and that have not been removed under Sec. 663.535(c) and 663.565.

(c) The State list must be accompanied by the performance and cost information contained in the local lists as required by Sec. 663.535(e). (WIA sec. ~~tion~~ 122(e)(4)(A).)

#### **Sec. 663.555 How is the State list disseminated?**

(a) The designated State agency must disseminate the State list and accompanying performance and cost information to the One-Stop delivery systems within the State.

(b) The State list and information must be updated at least annually.

(c) The State list and accompanying information form the primary basis of the One-Stop consumer reports system that provides for informed customer choice. The list and information must be widely available, through the One-Stop delivery system, to customers seeking information on training outcomes, as well as participants in employment and training activities funded under WIA and other programs.

(1) The State list must be made available to individuals who have been determined eligible for training services under Sec. 663.310.

(2) The State list must also be made available to customers whose training is supported by other One-Stop partners.

#### **Sec. 663.565 May an eligible training provider lose its eligibility?**

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) If the provider's *programs doesdo* not meet the established performance levels, ~~it~~ *the programs* will be removed from the eligible provider list.

(1) A Local Board must determine, during the subsequent eligibility determination process, whether a provider's *programs* meets performance levels. If the ~~provider~~ *program* fails to meet such levels, the ~~provider~~ *program* must be removed from the local list. *If all of the provider's programs fail to meet such levels, the provider must be removed from the local list.*

(2) The designated State agency upon receipt of the performance information accompanying the local list, may remove ~~a provider~~ *programs* from the State list if the agency determines the ~~provider~~ *program* failed to meet the levels of performance prescribed under Sec. 663.535(c). *If all of the provider's programs are determined to have failed to meet the levels, the designated State agency may remove the provider from the State list.*

(3) Providers determined to have intentionally supplied inaccurate information or to have subsequently violated any provision of title I of WIA or ~~these~~*the WIA* regulations, *including 29 CFR part 37*, may be removed from the list in accordance with the enforcement provisions of WIA section 122(f). A provider whose eligibility is terminated under these conditions is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance.

(4) The Governor must establish appeal procedures for providers of training to appeal a denial of eligibility under this *subpart* according to the requirements of 20 CFR 667.640(b).

#### **Sec. 663.570 What is the consumer reports system?**

The consumer reports system, referred to in WIA as performance information, is the vehicle for informing the customers of the One-Stop delivery system about the performance of training providers *and programs* in the local area. It is built upon the State list of eligible providers *and programs* developed through the procedures described in WIA section 122 and this subpart. The consumer reports system must contain the information necessary for an adult or dislocated worker customer to fully understand the options available to him or her in choosing a program of training services. Such program-specific factors may include overall performance, performance for significant customer groups (including wage replacement rates for dislocated workers), performance of specific provider sites, current information on employment and wage trends and projections, and duration of training programs.

#### **Sec. 663.575 In what ways can a Local Board supplement the information available from the State list?**

(a) Local Boards may supplement the information available from the State list by providing customers with additional information to assist in supporting informed customer choice and the achievement of local performance measures (as described in WIA section 136).

(b) This additional information may include:

- (1) Information on programs of training services that are linked to occupations in demand in the local area;
- (2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers; and
- (3) Other appropriate information related to the objectives of WIA, which may include the information described in Sec. 663.570.

#### **Sec. 663.585 May individuals choose training providers located outside of the local area?**

Yes. Individuals may choose any of the eligible providers *and programs* on the State list. A State may also establish a reciprocal agreement with another State(s) to permit *eligible* providers of *eligible* training *services**programs* in each State to accept individual training accounts provided in the other State. (WIA sections. 122(e)(4) and (e)(5).)

#### **Sec. 663.590 May a community-based organization (CBO) be included on an eligible provider list?**

Yes, CBO's may apply and be determined eligible providers of training services, under WIA section 122 and this subpart. As eligible providers, CBO's provide training through ITA's and may also receive contracts for training special participant populations when the requirements of Sec. 663.430 are met.

#### **Sec. 663.595 What requirements apply to providers of OJT and customized training?**

For OJT and customized training providers, One-Stop operators in a local area must collect such performance information as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate a list of providers that have met such criteria, along with the relevant performance information about them, through the One-Stop delivery system. Providers determined to meet the



criteria are considered to be identified as eligible providers of training services. These providers are not subject to the other requirements of WIA section 122 or this subpart.

## **Subpart F--Priority and Special Populations**

### **Sec. 663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?**

(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.

(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.

(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

### **Sec. 663.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?**

No. The statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

### **Sec. 663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?**

(a) The local Welfare-to-Work (WtW) program operator is a required partner in the One-Stop delivery system. 20 CFR part 662 describes the roles of such partners in the One-Stop delivery system and applies to the Welfare-to-Work program operator. WtW programs serve individuals who may also be served by the WIA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the WtW program in the One-Stop system. WtW participants, who are determined to be WIA eligible, and who need occupational skills training may be referred through the One-Stop system to receive WIA training, *when WtW grant and other grant funds are not available in accordance with Sec. 663.320(a)*. WIA participants who are also determined WtW eligible, may be referred to the WtW operator for job placement and other WtW assistance.

(b) The local TANF agency is specifically suggested under WIA as an additional partner in the One-Stop system. TANF recipients will have access to more information about employment opportunities and services when the TANF agency participates in the One-Stop delivery system. The Governor and Local Board should encourage the TANF agency to become a One-Stop partner to improve the quality of services to the WtW and TANF-eligible populations. In addition, becoming a One-Stop partner will ensure that the TANF agency is represented on the Local Board and participates in developing workforce investment strategies that help cash assistance recipients secure lasting employment.

## **Sec. 663.630 How does a displaced homemaker qualify for services under title I?**

Displaced homemakers may be eligible to receive assistance under title I in a variety of ways, including:

- (a) Core services provided by the One-Stop partners through the One-Stop delivery system;
- (b) Intensive or training services for which an individual qualifies as a dislocated worker/displaced homemaker if the requirements of this part are met;
- (c) Intensive or training services for which an individual is eligible if the requirements of this part are met;
- (d) Statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 665.210(f) .

## **Sec. 663.640 May a disabled individual whose family does not meet income eligibility criteria under the Act be eligible for priority as a low income adult?**

Yes. Even if the family of a disabled individual does not meet the income eligibility criteria, the disabled individual is to be considered a low-income individual if the individual's own income:

- (a) Meets the income criteria established in WIA section 101(25)(B); or
- (b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA section 101(25)(F).)

### **Subpart G--On-the-Job Training (OJT) and Customized Training**

## **Sec. 663.700 What are the requirements for on-the-job training (OJT)?**

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided ~~by~~*under a contract with* an employer in the public, private non-profit, or private sector. ~~A contract may be developed between the employer and the local program that provides~~*Through the OJT contract,* occupational training *is provided* for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA section 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA section 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA section 101(31)(C).)

## **Sec. 663.705 What are the requirements for OJT contracts for employed workers?**

OJT contracts may be written for eligible employed workers when:

- (a) The employee is not earning a self-sufficient wage as determined by Local Board policy;
- (b) The requirements in Sec. 663.700 are met; and
- (c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

## **Sec. 663.710 What conditions govern OJT payments to employers?**

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA section 101(31)(B).)

(c) Employers are not required to document such extraordinary costs.

#### **Sec. 663.715 What is customized training?**

Customized training is training:

(a) that is designed to meet the special requirements of an employer (including a group of employers);

(b) that is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and

(c) for which the employer pays for not less than 50 percent of the cost of the training. (WIA section 101(8).)

#### **Sec. 663.720 What are the requirements for customized training for employed workers?**

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in Sec. 663.715 are met; and

(c) The customized training relates to the purposes described in Sec. 663.705(c) or other appropriate purposes identified by the Local Board.

*Sec. 663.730 May funds provided to employers for OJT of (Note: Should be “or”) customized training be used to assist, promote, or deter union organizing?*

*No, funds provided to employers for OJT or customized training must not be used to directly or indirectly assist, promote or deter union organizing.*

### **Subpart H--Supportive Services**

#### **Sec. 663.800 What are supportive services for adults and dislocated workers?**

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA title I. Local Boards, in consultation with the One-Stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. ~~s~~Such policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA section 134(d)(2)(H).)

#### **Sec. 663.805 When may supportive services be provided to participants?**

(a) Supportive services may only be provided to individuals who are:

(1) Participating in core, intensive or training services; and

(2) Unable to obtain supportive services through other programs providing such services. (WIA section 134(e)(2)(A) and (B).)

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA section 101(46).)

**Sec. 663.810 Are there limits on the amounts or duration of funds for supportive services?**

(a) Local Boards may establish limits on the provision of supportive services or provide the One-Stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow One-Stop operators to grant exceptions to the limits established under paragraph (a) of this section.

**Sec. 663.815 What are needs-related payments?**

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

**Sec. 663.820 What are the eligibility requirements for adults to receive needs-related payments?**

Adults must:

- (a) Be unemployed,
- (b) Not qualify for, or have ceased qualifying for, unemployment compensation; and
- (c) Be enrolled in a program of training services under WIA section 134(d)(4).

**Sec. 663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?**

To receive needs related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment ~~assistance~~*allowance* under TAA or NAFTA-TAA; and

(2) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA-TAA.

**Sec. 663.830 May needs-related payments be paid while a participant is waiting to start training classes?**

Yes, ~~P~~*p*ayments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. The Governor may authorize local areas to extend the 30 day period to address appropriate circumstances.

**Sec. 663.840 How is the level of needs-related payments determined?**

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by Local Board policies. (WIA sec. ~~tion~~*tion* 134(e)(3)(C).)

## PART 664--YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Sec.

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*664.405 How must local youth programs be designed?*

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Authority: Sec. 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c)

### **Subpart A--Youth Councils**

#### **Sec. 664.100 What is the youth council?**

(a) The duties and membership requirements of the youth council are described in WIA section 117(h) and 20 CFR 661.335 and 661.340.

(b) The purpose of the youth council is to provide expertise in youth policy and to assist the Local Board in:

(1) Developing and recommending local youth employment and training policy and practice;

(2) Broadening the youth employment and training focus in the community to incorporate a youth development perspective;

(3) Establishing linkages with other organizations serving youth in the local area; and

(4) Taking into account a range of issues that can have an impact on the success of youth in the labor market. (WIA sec. 117(h).)

#### **Sec. 664.110 Who is responsible for oversight of youth programs in the local area?**

(a) The Local Board, working with the youth council, is responsible for conducting oversight of local youth programs operated under the Act, to ensure both fiscal and programmatic accountability.

(b) Local program oversight is conducted in consultation with the local area's chief elected official.

(c) The Local Board may, *after consultation with the CEO*, delegate its responsibility for oversight of eligible youth providers, as well as other *youth program* oversight responsibilities, to the youth council, recognizing the advantage of delegating such responsibilities to the youth council whose members have expertise in youth issues. (WIA sec. 117(h)(4).)

### **Subpart B--Eligibility for Youth Services**

#### **Sec. 664.200 Who is eligible for youth services?**

An eligible youth is defined, under WIA section 101(13), as an individual who:

(a) Is age 14 through 21;

(b) Is a low income individual, as defined in the WIA section 101(25); and

(c) Is within one or more of the following categories:

(1) Deficient in basic literacy skills;

- (2) School dropout;
- (3) Homeless, runaway, or foster child;
- (4) Pregnant or parenting;
- (5) Offender; or

(6) Is an individual (including a youth with a disability) who requires additional assistance to complete an educational program, or to secure and hold employment. (WIA sec. 101(13).)

**Sec. 664.205 How is the “deficient in basic literacy skills” criterion in Sec. 664.200(c)(1) defined and documented?**

(a) Definitions and eligibility documentation requirements regarding the “deficient in basic literacy skills” criterion in Sec. 664.200(c)(1) may be established at the State or local level. These definitions may establish such criteria as are needed to address State or local concerns, but must include a determination that an individual:

- (1) Computes or solves problems, reads, writes, or speaks English at or below ~~grade level 8.9~~ *the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test*; or
- (2) Is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual’s family or in society. (WIA secs. 101(19), 203(12).)

(b) In cases where the State Board establishes State policy on this criterion, the policy must be included in the State plan. (WIA secs. 101(13)(C)(i), 101(19).)

**Sec. 664.210 How is the “...requires additional assistance to complete an educational program, or to secure and hold employment” criterion in Sec. 664.200(c)(6) defined and documented?**

Definitions and eligibility documentation requirements regarding the “requires additional assistance to complete an educational program, or to secure and hold employment” criterion of Sec. 664.200(c)(6) may be established at the State or local level. In cases where the State Board establishes State policy on this criterion, the policy must be included in the State Plan. (WIA sec. 101(13)(C)(iv).)

**Sec. 664.215 Must youth participants be registered to participate in the youth program?**

- (a) Yes, ~~A~~ *all* youth participants must be registered.
- (b) Registration is the process of collecting information to support a determination of eligibility.
- (c) ~~EEO~~ *Equal opportunity* data must be collected ~~on individuals~~ during the registration process *on any individual who has submitted personal information in response to a request by the recipient for such information.*

**Sec. 664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?**

Yes, ~~U~~ *up* to five percent of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided that they are within one or more of the following categories:

- (a) School dropout;
- (b) Basic skills deficient, as defined in WIA section 101(4);
- (c) Are one or more grade levels below the grade level appropriate to the individual’s age;
- (d) Pregnant or parenting;
- (e) Possess one or more disabilities, including learning disabilities;
- (f) Homeless or runaway;
- (g) Offender; or
- (h) Face serious barriers to employment as identified by the Local Board. (WIA sec. 129(c)(5).)